Supreme Court, U. S.
FILED
FEB 4 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

No. **76-1079**

JOZEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK)
Plaintiffs and Respondents,
[By the Consul General of Yugoslavia
at San Francisco, California, their
Attorney-in-Fact]

Petitioners

vs.

THE HONORABLE HOLLIS G. CONNORS,
Treasurer of the State of Montana,
and KEITH COLBO, Director, Department
of Revenue of the State of Montana

Defendants and Appellants
Respondents

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF MONTANA

Peter A. Schwabe, Sr.
2001 Georgia-Pacific Building,
Portland, Oregon 97204

Thomas F. Dowling,
1420 Cedar - Airport Way,
Helena, Montana 59601
Counsel for Petitioners

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	3
Treaty and Statutes Involved . .	4
Statement	6
Reasons for Granting the Writ. .	17

1. Whether under Article II of the 1881 Convention in force and effect between the United States and Yugoslavia a State of the United States may deny to Yugoslav citizens residing in Yugoslavia the right to recover their escheated inheritance of a decedent's estate within the jurisdiction of such State on a ground which would not be applicable to a citizen of the United States, is a Federal question of substance which the Court below decided in a way not in accord with the decisions of this Court in Kolovrat v. Oregon, 366 U.S. 187 (1961) and in the Matter of the Estate of Anton Belemecich, deceased [also entitled The Consul General of Yugoslavia at Pittsburgh, Pennsylvania (etc.)

Page

v. Commonwealth of Pennsylvania], 375 U.S. 395 (1964). 17

2. Any State of the United States denying to any foreign citizen any substantive, substantial right guaranteed to such foreign citizen by a solemn treaty between his country and the United States is an impermissible infraction of domestic and international law which may, in fact most certainly would, have a profound impact on the conduct of the foreign affairs and foreign relations of the United States in that it would raise doubt over the sanctity of treaties concluded with the United States. 18

3. Any number of Yugoslav heirs to escheated Montana estates may in the future find themselves similarly situated to these Oblak heirs, the same or similar questions may—in fact surely will—arise not only in Montana but in other states, and in respect to citizens of other foreign countries who have similar treaties with the United States.

Page

Therefore the opportunity of this case ought not be missed to make to clear once again that this Court meant what it said in Kolovrat and by Belemecich, that the 1881 treaty gives Yugoslav heirs all of the same rights of inheritance as American citizens, that there is no room for exceptions or the creation of a special "class" of United States citizens [App. A, p. 6a infra] with rights of inheritance other and greater than those granted to Yugoslav citizens 19

4. When the court of last resort of a State has upheld the denial of such a right, only this Court remains as the last tribunal in which the error may be rectified, hence the writ should be granted 20

Conclusion 23

Appendix A - Opinions, Supreme Court of Montana 1a
Dissenting opinion 8a
Remittitur 10a

Appendix B - Findings of Fact, Opinion and Conclusions of

	Page
Law, District Court of Lewis and Clark County, Montana	13a
Judgment by said court	21a
Appendix C - Treaty Provisions Involved	23a
Appendix D - Statutory Provisions Involved	
§91-502 R.C.M. 1947, as amended.	25a
§91-509 R.C.M. 1947, as amended.	27a
Appendix E - Complaint	28a
Appendix F - Answer.	32a

CITATIONS

Cases:

Belemecich Estate, also entitled The Consul General of Yugoslavia at Pittsburgh, Pennsylvania, as Attorney-in-Fact for Ane Bulik, Mato Belemecich, Ane Belemecich Kljunak, Maria Belemecich and Pera Belemecich Boscovich, v. Commonwealth of Pennsylvania, 375 U.S. 395 (1964)	18,19, 22,23, 24

	Page
Kolovrat v. Oregon, 366 U.S. 187 (1961).	3, 4, 9,10, 14,16, 17,18, 19,20, 23,24
Spehar's Estate, 14 Mont. 76, 367 P2d 563 (1968)	10,14
Zschernig v. Miller, 389 U.S. 429 (1968)	10
Treaties:	
Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation), United States/ Serbia, 1881, 22 Stat. 963, Tr. Ser. 319, 2 Malloy 1613, (Article II)	3, 4, 9,12, 18,19, 20,21, 22
Treaty of Friendship, Commerce and Navigation, United States/ Argentina, 1853, 10 Stat. 1005, Tr. Ser. 4, 1 Malloy 20, (Article IX)	10
Statutes:	
Montana, Rev. Stat. 1947 §91-502 as amended	5,16

	Page
§91-509 as amended	5,11, 14,16
§91-520	6, 9, 10,11
Oregon Rev. Stats., §111.070 (repealed 1971).	10
U.S.C. Tit. 28, Sec. 1257(3) . .	3
Penna. Act of Assembly, July 28, 1953, P.L. 674, 20 Purdon Penna. Stats. Secs. 1155-1159.	18,23

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1977

No.

JOSEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK)
Plaintiffs and Respondents,
[By the Consul General of Yugoslavia at San Francisco, California, their Attorney-in-Fact]

Petitioners

vs.

THE HONORABLE HOLLIS G. CONNORS, Treasurer of the State of Montana, and KEITH COLBO, Director, Department of Revenue of the State of Montana

Defendants and Appellants
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

The petitioners Jozefa Levc and Ivana Ogrin, by the Consul General of Yugoslavia at San Francisco, California, their attorney-in-fact, respondents in the proceeding below, pray that a writ of certiorari issue

to review the judgment herein of the Supreme Court of Montana.

OPINIONS BELOW

The opinion of the Supreme Court of Montana, per Harrison, C. J., and the dissenting opinion of Haswell J., are reported at 33 St. Rptr. 989 (Mont) and 555 P.2d 750, and are set out in App. A. pp. 1a-10a infra. The opinion of the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, incorporated in its Findings of Fact, Opinion and Conclusions of Law. is not reported. It is set out in App. B, pp. 13a-21a, infra.

JURISDICTION

The opinion and order of the Supreme Court of Montana remanding the case to the District Court "with direction to apply the two-year limitation in accordance with this opinion", and so in effect reversing the

judgment of the District Court, is dated and was filed October 18, 1976. App. A, pp. 1a-10a, infra. The petitioners' timely Petition for Rehearing, filed October 25, 1976, was denied November 10, 1976, and the matter was remitted November 10, 1976. App. A, pp. 10a-13a, infra. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3).

QUESTION PRESENTED

Whether, in light of the holding of this Court in Kolovrat v. Oregon, 366 U.S. 187 (1961) that under Article II of the Convention for Facilitating and Developing Commercial Relations of 1881 [22 Stat. 963. Tr. Ser. 319] in force and effect between the United States and Yugoslavia citizens and residents of Yugoslavia have the same rights to inherit property located in the United States as though they were American citizens, the State of Montana has, by

denying these Yugoslav citizen heirs the same exemption from a two-year time limitation granted by statute to United States citizens to bring an action for recovery of an escheated estate, deprived the Yugoslav heirs of a substantial right of inheritance provided for them by said treaty and the prior applicable decisions of this Court.

TREATY AND STATUTES INVOLVED

The treaty provisions involved are those of Article II of the Convention for Facilitating and Developing Commercial Relations (sometimes called the Convention of Commerce and Navigation) concluded between the United States and Serbia on October 2/14, 1881, 22 Stat. 963, Tr. Ser. 319, currently and at all times material here in force and effect between the United States and Yugoslavia. Kolovrat v. Oregon, 366 U.S. 187 (1961). Such provisions are set out in App. C, pp. 23a-25a, infra.

The statutory provisions primarily involved are those of Section 91-509, Revised Codes of Montana (R.C.M.) 1947, Vol. 6, Part 2, p. 58, set out in App. D, pp. 27a-28a, infra, prescribing the procedure for claiming escheated property, with particular reference to the following provisions:

> "* * * Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease." (underlining ours.)

Secondarily involved are the statutory provisions of Section 91-502, R.C.M. 1947, Vol. 6, Part 2, pp. 55-56, likewise set out in App. D, pp. 25a-27a, infra, with particular reference to the following provisions:

> "* * * such ten (10) year period

> being a time within which the owner, beneficial owner, or any person having a right, title or interest in the property or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state".

Only incidentally involved are the provisions of Section 91-520, R.C.M. 1947, Montana's so-called reciprocal inheritance rights statute, but as the defense under this statute, that is denial of the existence of the reciprocal conditions between the United States and Yugoslavia required by this statute to qualify foreign citizen and resident heirs to inherit in Montana, was later on abandoned and is not in issue, it is not deemed necessary to include this lengthy statute in the Appendix.

STATEMENT

The facts of the case are very simple and not in dispute.

Frank O'Blak [whose true Yugoslav/ Slovenian name was Franc Oblak], a resident of Montana, died intestate in Billings, Montana, on June 25, 1970. His estate was administered before the District Court for Yellowstone County. No heirs being known and none having appeared to claim the estate, the net estate, being a cash sum of $8,693.91, was escheated to the State of Montana by an Order Settling Final Account and Decree of Final Distribution entered December 18, 1970. Pursuant thereto the Treasurer of the State of Montana received the escheated sum and issued his Receipt therefor on January 22, 1971.

On August 14, 1973, Jozefa Levc and Ivana Ogrin through the Consul General of Yugoslavia at San Francisco, California, filed their Complaint alleging themselves to be nieces and the heirs at law of said Frank O'Blak, deceased, and praying for

judgment requiring the defendants, that is the Treasurer of the State of Montana and the Director of the Department of Revenue of the State of Montana [so in effect the State of Montana], to pay over the escheated fund, after deducting inheritance tax, if any, to them as the decedent's heirs. The Complaint is set out in App. E, pp. 28a-31a, infra [omitting, as unnecessary and unduly burdening this petition Exhibit "A", the document issued by the Yugoslav government authorities to show the identities and relationships of Jozefa Levc and Ivana Ogrin as the decedent's nieces and heirs, and Exhibit "B", the consular power of attorney by the heirs to the Consul General of Yugoslavia in San Francisco].

On October 9, 1973, the Attorney General of Montana filed the defendants' Answer which is set out in App. F, pp. 32a-33a, infra. The SECOND DEFENSE alleges [App. F.

p. 32a]:

> "....that said action is barred by the applicable statute of limitations."

and in the THIRD DEFENSE there is this very significant allegation [App. F, p. 33a]:

> "Defendants deny each and every other allegation contained in the Complaint and particularly those allegations contained in paragraph 4 thereof on the grounds and for the reasons that reciprocity does not exist between the State of Montana and the Socialist Federal Republic of Yugoslavia for inheritance purposes nor is there a free transfer of funds between said State and Nation."

This allegation was based of course on Montana's so-called "reciprocal inheritance rights" statute § 91-520 R.C.M. 1947 [heretofore mentioned at p. 6, supra] in utter and obvious disregard of this Court's holding in Kolovrat v. Oregon, 366 U.S. 187 (1961) that Yugoslav citizens by virtue of Article II of the Convention of 1881 have and must be accorded in the United States

the same rights of inheritance as United States citizens [in fact native citizens under Article IX of the 1853 Argentine treaty applicable to Yugoslavia under the most-favored-nation clause of the 1881 Convention]; also in disregard of the fact that the Supreme Court of Montana in Spehar's Estate, 14 Mont. 76, 367 P.2d 563, 565 (1968) had squarely so held in expressed compliance with Kolovrat; and also in disregard of this Court's holding in Zschernig v. Miller, 389 U.S. 429 (1968) that Oregon's reciprocal inheritance rights statute [O.R.S. 111.070, repealed in 1971], which was very similar to but actually much less stringent and confiscatory than Montana's §91-520 R.C.M. 1947, was unconstitutional on the ground (inter alia) that it was an impermissible attempt by a state to invade the exclusive power of the federal government to regulate the foreign affairs

and the foreign relations of the United States.

It may be said, therefore, that the federal question sought to be reviewed was first raised by and in the Answer of the Montana Attorney General [App. F, pp.32a-33a, infra] pleading the limitation statute and seeking to deny the rights of inheritance of the Yugoslav heirs on the grounds of non-existence of reciprocity "for inheritance purposes" and that there is not "a free transfer of funds between said State and Nation'.

As heretofore stated (p. 6 supra), the "reciprocity" defense under §91-520 R.C.M. 1947, in fact all other defenses were later abandoned except the limitations bar, leaving as the only issue whether the Yugoslav heirs were entitled to the same two-year exemption provided in §91-509 for United States citizens and if so, when

—if ever—their disabilities ceased and the statute began to run.

The District Court requested briefs relative to the question of when the statute of limitations began to run in the instant case. Thereafter, upon due proceedings had, the District Court on July 15, 1975, rendered its Findings of Fact, Opinion and Conclusions of Law set out in App. B, pp. 13a-21a, infra. The Court held that by virtue of the 1881 Convention or Treaty the plaintiffs "being residents of the Peoples Republic of Yugoslavia, have the same rights of inheritance as American citizens living in the United States", found as a matter of fact that the disability of the Yugoslav heirs living in Yugoslavia ceased when they "learned of the date of death of their relative, Frank O'Blak, and that is May 24, 1972" and held that the statute of limitations began to

run on that date. [App. B, p.21a, infra] The Complaint seeking recovery of the escheated estate having been filed on August 14, 1973, this was of course far short of May 24, 1974, when the two-year bar provided by the statute would have become effective. Accordingly the Court held the plaintiffs "are entitled to recover from the Treasurer of the State of Montana all sums delivered to the Treasurer by the administrator of the estate of Frank O'Blak, deceased". [App. B, p.21a, infra] Thereupon Judgment was entered on July 15, 1975 set out in App. B, pp. 21a-23a, infra, in which the Court directed that:

> "This money is to be delivered to the Plaintiffs by payment to their attorney in fact, Sime Karaman, Counsel General of the Social Federalist Republic of Yugoslavia, at San Francisco, California."
> [App. B, pp. 22a-23a, infra]

The defendant Montana state officials appealed to the Supreme Court of Montana

and that court of course immediately had before it the primary, over-riding federal question sought to be reviewed here. For the first eleven of the seventeen paragraphs of its opinion the Court fervently declared its obeisance to Kolovrat and its own adoption of that decision in Estate of Spehar, supra, but then refused to carry out the principle so thoroughly established in Kolovrat that Yugoslav heirs must be granted all rights of inheritance given to United States citizens. Suddenly, in the twelfth paragraph beginning with the sentence "However, they are not included in the class of United States citizens outside the United States" [App. A, p.6a, infra], the Court finds a "class" of United States citizens to which these Yugoslav heirs do not belong, an indication of the Court's reasoning being that since the statute was enacted in 1943, the exception was

intended to apply only to those Americans who were "called to duty outside the United States. Presumably this exception was enacted for their benefit until they could return to their homeland". [App. A, p.6a, infra]. But if that were so why did not the first postwar legislature repeal this provision? And even if this be a valid explanation for the statute's enactment and particularly for the exception, it does not in the least affect the rights vested in the Yugoslav heirs by the overriding treaty and the federal policy implemented thereby.

The fact is that these Yugoslav heirs, beyond the limits of the United States, fit perfectly into the exception, as they were indeed at all times "beyond the limits of the United States". It could then be said that actually their disability never ceased since they never entered the United States. The trial court found that their disability

ceased when they learned of their uncle's death and of the estate left by him in Montana, that is May 24, 1972 [App. B, p.21a, infra]. The recovery complaint was of course filed on August 24, 1973, well within two years after that. But if the Montana Supreme Court's thinking were adopted that the exemption was provided by the statute for the benefit of Americans serving overseas during World War II—although there is no language whatever to support this in the statute itself—and that the disability ceased when they returned home, then, as just stated, these Yugoslav heirs' disability never ceased. However, the ten-year limitation of Section 91-502, R.C.M. 1947 would then, as the trial court pointed out in its opinion [App. B, pp. 19a-20a, infra] have barred a claim by them and all others. Applying this Court's holding in Kolovrat v. Oregon, it is completely

immaterial whether the trial court was right or wrong in holding that the Yugoslav heirs' disability ceased when they learned of their uncle's death and estate since it is recognized that they were at all times residents of Yugoslavia and never at any time set foot on the United States. As the dissenting opinion of Montana Supreme Court Justice Haswell so aptly puts it [App. A, p. 9a, infra]:

> "Where the legislature has made an exception for United States citizens, the treaty requires that the same exception be applied to these heirs."

REASONS FOR GRANTING THE WRIT

1. Whether under Article II of the 1881 Convention in force and effect between the United States and Yugoslavia a State of the United States may deny to Yugoslav citizens residing in Yugoslavia the right to recover their escheated inheritance of a decedent's estate within the jurisdiction

of such State on a ground which would not be applicable to a citizen of the United States, is a Federal question of substance which the Court below decided in a way not in accord with the decisions of this Court in Kolovrat v. Oregon, 366 U.S. 187 (1961) and in the Matter of the Estate of Anton Belemecich, deceased [also entitled The Consul General of Yugoslavia at Pittsburgh, Pennsylvania (etc.) v. Commonwealth of Pennsylvania], 375 U.S. 395 (1964).

2. Any State of the United States denying to any foreign citizen any substantive, substantial right guaranteed to such foreign citizen by a solemn treaty between his country and the United States is an impermissible infraction of domestic and international law which may, in fact most certainly would, have a profound impact on the conduct of the foreign affairs and foreign relations of the United States in

that it would raise doubt over the sanctity of treaties concluded with the United States.

3. Any number of Yugoslav heirs to escheated Montana estates may in the future find themselves similarly situated to these Oblak heirs, the same or similar questions may—in fact surely will—arise not only in Montana but in other states, and in respect to citizens of other foreign countries who have similar treaties with the United States. Therefore the opportunity of this case ought not be missed to make it clear once again that this Court meant what it said in Kolovrat and by Belemecich, that the 1881 treaty gives Yugoslav heirs all of the same rights of inheritance as American citizens, that there is no room for exceptions or the creation of a special "class" of United States citizens [App. A, p. 6a infra] with rights of

inheritance other and greater than those granted to Yugoslav citizens.

4. When the court of last resort of a State has upheld the denial of such a right, only this Court remains as the last tribunal in which the error may be rectified, hence the writ should be granted.

These reasons for granting this petition for writ appear to be self-evident, so it is deemed redundant to elaborate further beyond setting forth a number of excerpts from Kolovrat v. Oregon, 366 U.S. 187 (1961) particularly and directly applicable to this case. At p. 191 it is stated:

> "For reasons to be stated, we hold that the 1881 Treaty does entitle petitioners to inherit personal property located in Oregon on the same basis as American next of kin."

at p. 192:

> "We cannot accept the state court's more restrictive

> interpretation when we view the Treaty in the light of its entire language in history. This Court has many times set its face against treaty interpretations that unduly restrict rights a treaty is adopted to protect."

Rejecting a narrow, restrictive interpretation of the treaty urged by the Attorney General of Oregon, this Court said at p. 194:

> "It is not in such a niggardly fashion that treaties designed to promote the freest kind of traffic, communications and associations among nations and their nationals should be interpreted, unless such an interpretation is required by the most compelling necessity. There is certainly no such compulsion in the 1881 Treaty's language or history."

and, finally at p. 195:

> "And relevant diplomatic correspondence and instructions issued by our State Department show that the 1881 Treaty was one of a series of commercial agreements which were negotiated and concluded on the basis of the most expansive principles of reciprocity. The Government's purpose in entering into that series of treaties was in general to put

> the citizens of the United States and citizens of other treaty countries on a par with regard to trading, commerce and property rights."

Nowhere in this case, either in the trial court or the Montana Supreme Court, was any attempt made by the Attorney General of Montana to even suggest, much less point out a "most compelling necessity" to deny these Yugoslav heirs the same rights and conditions given citizens of the United States in respect to recovering their escheated inheritances, nor for refusing to carry out the federal Government's purpose in entering into the 1881 treaty and others of that series of treaties "to put citizens of the United States and citizens of other treaty countries on a par with regard to trading, commerce and property rights."

Basically the issue here presented is the same as in the Estate of Anton Belemecich, deceased, also entitled The Consul

General of Yugoslavia at Pittsburgh, Pennsylvania [etc.] v. Commonwealth of Pennsylvania, No. 566, October Term 1963. There the Pennsylvania Supreme Court sought to withhold distribution of an estate to Yugoslav heirs under its so-called "Iron Curtain Act" [Pennsylvania Act of Assembly of July 28, 1953, P.L. 674, 20 Purdon Penna. Stats. Secs. 1155-1159] on basis of a finding—or rather its conclusion—that the Yugoslav heirs would not receive the full use, benefit and control of their inheritances. This Court granted the petition for writ of certiorari and reversed on authority of Kolovrat v. Oregon, 366 U.S. 187, in a two-line per curiam opinion, 375 U.S. 395 (1964). It is respectfully suggested that this case calls for similar treatment at the hands of this Court.

CONCLUSION

Not one valid reason, no justification

whatever exists for the refusal of the State of Montana to follow this Court's interpretation and application of the 1881 treaty as so painstakingly set forth in Kolovrat. Perhaps one more affirmation of Kolovrat added to the previous so emphatic affirmation in Belemecich, will suffice to convey the message that treaties are indeed the supreme law of the land, to be observed by all "on the most expansive principles of reciprocity".

The question presented in this petition is a Federal question of substance the final resolution of which will not only determine a substantial private right but have an important nation-wide as well as worldwide impact in demonstrating to the states of this union and to the nations of the world that an individual state may not subordinate Federal foreign policy to its own domestic policy, that rights granted

to foreign nationals in treaties concluded by the United States with their governments will be zealously safeguarded and the benefits thereof assured to them.

The petition should be granted.

Respectfully submitted,

Peter A. Schwabe, Sr.
2001 Georgia-Pacific Building
Portland, Oregon 97204

Thomas F. Dowling
1420 Cedar - Airport Way,
Helena, Montana 59601
Counsel for Petitioners

APPENDIX A

No. 13220

IN THE SUPREME COURT OF THE
STATE OF MONTANA

1976

JOSEFA LEVC (nee O'Blak) and
IVANA OGRIN (nee O'Blak),

Plaintiffs and Respondents,

-vs-

THE HONORABLE HOLLIS G. CONNORS,
Treasurer of the State of Montana,
and Keith Colbo, Director, Department
of Revenue of the State of Montana,

Defendants and Appellants.

Appeal from: District Court of the First Judicial District, Honorable Peter Meloy, District Judge presiding.

Counsel of Record:

For Appellants:

Hon. Robert L. Woodahl, Attorney General, Helena, Montana

Marshall Murray, argued, Kalispell, Montana

For Respondents:

Thomas F. Dowling argued, Helena, Montana

Submitted: August 31, 1976

Decided: OCT 18 1976

Filed: OCT 18 1976

/s/ Thomas J. Kearney
Clerk

Mr. Chief Justice James T. Harrison delivered the Opinion of the Court.

This is an appeal from a judgment of the district court, Lewis and Clark County, awarding plaintiffs funds that had escheated to the State of Montana.

Plaintiffs are the nieces and heirs at law of Frank O'Blak who died intestate in Billings, Montana, on June 24, 1970.

The estate was administered by public administration, and after finding no known heirs, it was ordered paid to the state

treasurer as escheated funds in the amount of $8,693.93.

When the heirs in Yugoslavia learned of their uncle's death they filed this action to claim the funds. The district court ruled the heirs were within the exception to the two-year statute of limitations even though the action was filed more than two years after the escheated funds had been received by the state treasurer.

The heirs were granted judgment for the escheated funds.

The issue before this Court is whether the exception to the two-year statute of limitations for citizens of the United States beyond the limits of the United States, applies to citizens of Yugoslavia resident in Yugoslavia.

The statute in question, section 91-509, R.C.M. 1947, reads in pertinent part:

> "* * * Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease." (Emphasis supplied.)

Plaintiffs are not citizens of the United States, but are citizens and residents of the Peoples Republic of Yugoslavia. It is admitted for this case that reciprocity of inheritance rights and reciprocity of transfer of funds exist between the United States and Yugoslavia.

It is settled by Kolovrat v. Oregon, 366 U.S. 187, 6 L ed 2d 218, 81 S.Ct. 922, and Estate of Spehar, 140 Mont. 76, 367 P.2d 563, that under the reciprocity provisions of an 1881 treaty and its "most favored nation" clause, Yugoslavian claimants have the same right to inherit their

relatives' personal property as they would if they were American citizens living in Montana. The relevant portions of the treaties directing that result are set out in the footnotes to the report of Kolovrat.

The district court held that the Yugoslavian heirs are entitled to the same exception that American citizens have who are outside the United States until their disability ceases and that their disability reasonably ceased in this case upon actual notice of the death of their uncle. The Court also indicated that section 91-502, R.C.M. 1947, requires the state to hold escheated property in trust for 10 years within which time it may be claimed by filing an action.

We hold that the statute applies to these Yugoslavian claimants as it would to Montana residents. There is no question they are entitled to inherit property on

the same basis as residents. This is in accordance with Kolovrat.

However, they are not included in the class of United States citizens outside the United States. We do not feel compelled to go beyond the holding in Kolovrat and judicially designate them as within that class and entitled to the exception.

This exception was enacted in 1943. At that time large numbers of our citizens were called to duty outside the United States. Presumably this exception was enacted for their benefit until they could return to their homeland.

We are referred to the general rules that limitation statutes making exceptions in favor of persons under disability must be strictly construed and that courts will not read into statutes of limitation an exemption or disability which has not been embodied therein.

If we were to accept plaintiffs' argument that the statute did not run until they received notice of the death, we would be reading into the statute an additional requirement. Notice of the death of a deceased is not a disability or exception to the statute.

We also point out that the statute in question here is a limitation statute and affects the remedy to assert the right, not the right itself. The right of these heirs to inherit is not in question and is established.

The case is remanded to the district court with direction to apply the two-year statute of limitation in accordance with this opinion.

/s/ James T. Harrison
Chief Justice

We concur:
/s/ John Conway Harrison

/s/ Wesley Castles
Justices

Mr. Justice Haswell dissenting:

I dissent. In my view these Yugoslavian claimants are entitled to the property of their deceased relative.

The provisions of the treaties held to apply in Kolovrat v. Oregon, 366 U.S. 187, 81 S.Ct. 922, 6 L ed 2d 218, are broader than the specific holding required in that case. The following is a quote from one of the treaties held to apply in Kolovrat and is set out in a footnote to Kolovrat at page 223:

> "'In whatever relates to * * * acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, * * * the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens* * *.'" (Emphasis added.)

Although the decision in this case necessarily goes beyond Kolovrat because we are concerned here with a statute of limitations where the right to inherit is con-

ceded, the emphasized portion of the treaty dictates that these heirs have the same privilege as native citizens under the statute of limitations.

The treaty requires that in whatever relates to acquiring and disposing of property, these heirs are the same as native citizens. These words do not allow a distinction between the right to inherit, established in Kolovrat, and the remedy to obtain that right as affected by a limitation statute. Where the legislature has made an exception for United States citizens, the treaty requires that same exception be applied to these heirs. Therefore, because United States citizens are entitled to claim within two years of actual notice of the death of their deceased relative in Yugoslavia, Yugoslavian citizens are entitled to claim within the same time period and the claim here involved

is not barred.

Accordingly I would affirm the judgment of the district court.

/s/ Frank I Haswell
Justice

REMITTITUR

In the Supreme Court of the

State of Montana

13220
D.C. No 13220 37017

June Term A. D. 1976

The Chief Justice of the Supreme Court of the State of Montana:

To the Honorable Judge of the District Court of the First Judicial District, in and for the County of Lewis and Clark, Greeting:

WHEREAS, In the said District Court in a cause between Josefa Levc et al., Plaintiffs and Respondents and The Honorable

Hollis G Connors et al., Defendants and Appellants wherein the judgment of the said District Court, entered in said cause on the 15th day of July A. D. 1975 was in favor of the said Plaintiffs and Respondents and against the said Defendants and Appellants as by the inspection of the transcript of the record of said Court in said cause which was brought into the Supreme Court of said State by virtue of an appeal, agreeably to the statute of said State and the rules of said Supreme Court in such case made and provided, fully and at large appears.

AND WHEREAS, in the June term of court in the year of our Lord, one thousand nine hundred and seventy-six said cause came on to be heard before said Supreme Court and was argued by counsel.

WHEREUPON, On consideration, it is now here ordered and adjudged by this Court

that the judgment of the Court below, entered in this cause on the 15th day of July A. D. 1975 is remanded to the district court with direction to apply the two-year statutes of limitation in accordance with the Opinion.

Costs in this Court:

Appellant	Appearance	$ None
Respondent	Appearance	$ 10.00
Remittitur		$ None

October 18 A. D. 1976

You, THEREFORE, are hereby commanded that such further proceedings be had in said cause as, according to right and justice, and the laws of the State of Montana ought to be had, not inconsistent with the opinion hereto attached.

WITNESS: The Honorable James T Harrison, Chief Justice of the Supreme Court of the State of Montana, this 10th day of November A. D. 1976.

/s/ Thomas J. Kearney
Clerk of the Supreme Court
of the State of Montana

APPENDIX B

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARK.

JOSEFA LEVC (nee O'BLAK) and
IVANA OGRIN (nee O'BLAK),

Plaintiffs,

vs.

THE HONORABLE HOLLIS G. CONNORS, Treasurer of the State of Montana, and KEITH COLBO, Director, Department of Revenue of the State of Montana,

Defendants.

No. 37017

FINDINGS OF FACT, OPINION AND CONCLUSIONS OF LAW

Complaint was filed in this matter on behalf of foreign heirs of a decedent resident of the State of Montana to recover an escheated estate. A Motion to Dismiss and Answer were filed by the parties Defendant. Thereafter, Motions for Summary Judgment were filed by all parties to this matter on the basis of Pretrial Memoranda and the pleadings. Thereafter, the Court allowed counsel for the Plaintiffs time within which to file an Affidavit of the Plaintiffs relative to the issue of when the Plaintiffs gained knowledge of the death of the decedent. In the Motions for Summary Judgment, it was conceded by all the parties that a two-year statute of limitations was applicable to escheated estates and the sole question before the Court was the time when the statute of limitations commenced to run.

The Court, having heard and received all the evidence, and considered all of the

exhibits and arguments of counsel and briefs in support thereof, and being fully apprised regarding the facts and circumstances of this case, and the law applicable to and controlling this case, hereby makes the following

FINDINGS OF FACT

1. This action was brought pursuant to R.C.M. 1947, Section 91-509, as amended.

2. The defense raised by the State of Montana is that the action must be brought within two years from the date on which money or property is received by the State Treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limits or two years after their respective disabilities cease.

3. That Plaintiffs are the nieces and

heirs at law of Frank O'Blak, deceased, who died intestate, having left personal property, to-wit: Cash in the sum of $8,693.91 in Yellowstone County, Montana.

4. That in Probate Cause No. 16420, in the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone the Administrator of Frank O'Blak, deceased, caused said estate to be probated and delivered by way of escheat to the State of Montana the sum of $8,693.91 on the 22nd day of January, 1971, said moneys having been disbursed to the State Treasurer.

5. That the instant action for recovery was filed August 14, 1973.

6. That the Plaintiffs are residents of the Peoples Republic of Yugoslavia with which a Treaty or Convention for facilitating and developing commercial relations exists between the United States and the

State of Serbia (22 Stat 963) wherein heirs who are residents of the Peoples Republic of Yugoslavia are entitled to and must be accorded the same rights of inheritance as American citizens living in the United States.

7. That the Plaintiffs first learned of the death of their relative, Frank O'Blak. by reason of communications from the Honorable Robert H. Wilson of Billings, Montana, on May 24, 1972.

OPINION

The plaintiffs here were citizens and residents of Yugoslavia and are the heirs at law of Frank O'Blak who dies intestate in Yellowstone County. On administration of the estate on January 22, 1971, the estate of $8,693.91 was, by way of escheat, delivered to the State Treasurer of the State of Montana.

The heirs have made claim to the funds

by petition to this court.

The issue is whether or not the claim is barred by virtue of Section 91-509, R.C.M. 1945 which reads, in part, as follows:

> "* * * Such action must be brought within two (2) years from the date on which the money or property is received by the State Treasurer, saving however, to infants and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limits or two (2) years after their respective disabilities cease. ***"

It is well settled that citizens of Yugoslavia "have the same rights of inheritance in the United States (and Montana) as if they were American citizens residing in Montana". Estate of Spehar, 140 Mont. 76.

The claimants here have the same right of "disability" (Section 91-509) as do American citizens and who are not living in the United States. The question arises as

to how, under Section 91-509, the disability is removed. There is no case law extant as to this question. It is reasonable that the legislature intended that the disability would be removed either by notice to the non-resident heir or by such heir returning to the United States. If one follows the reasoning above suggested, a second question arises as to when, if ever, the right of action may be barred. Section 91-502 provides the answer to the second question. Section 91-502 provides the escheated funds shall be held in trust for a period of ten years and then provides "such ten (10) year period being a time within which the owner, beneficial owner or any person having a right, title or interest in the property or money escheated may make claim by initiation of an action [handwritten interlineation: for the dissolution of the trust] of the trust

in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the State." Thus, reading Section 91-509 together with Section 91-502, the rule is that in all events a claim must be made within the ten (10) year period provided by Section 91-502.

In the case under consideration here the claimants having made claim within two years after notice and within ten years provided by Section 91-502, the claims should be allowed.

CONCLUSIONS OF LAW

1. The Court incorporates each and every Finding of Fact above as a Conclusion of Law.

2. The Court finds that the Plaintiffs, being residents of the Peoples Republic of Yugoslavia, have the same rights of inheritance as American citizens living

in the United States.

3. That the statute of limitations in this matter commenced to run on the date the Plaintiffs learned of the date of death of their relative, Frank O'Blak, and that is May 24, 1972.

4. The Court concludes that the statute of limitations has not barred the bringing of this action and that the Plaintiffs are entitled to recover from the Treasurer of the State of Montana all sums delivered to the Treasurer by the administrator of the estate of Frank O'Blak, deceased.

WHEREFORE, let Judgment enter accordingly.

Dated this 15 day of July, 1975.

/s/ PETER G. MELOY
Judge of the District Court

[Heading and title omitted]

No. 37017 - J U D G M E N T

This matter having been brought before the Court and Motions for Summary Judgments having been made by both sides, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Honorable Hollis G. Connors, Treasurer of the State of Montana, and Keith Colbo, Director of the Department of Revenue of the State of Montana, or their successors in office, be and hereby are ordered to pay the sum of $8,693.91 to Josefa Levc (nee O'Blak) and Ivana Ogrin (nee O'Blak), said sum being the amount of cash delivered to the Defendants in Probate Cause No. 16420 in the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone, delivered by way of escheat to the State of Montana.

This money is to be delivered to the

Plaintiffs by payment to their attorney in fact, Sime Karaman, Counsel General of the Social Federalist Republic of Yugoslavia, of San Francisco, California.

DATED this 15 day of July, 1975.

/s/ Peter G. Meloy
JUDGE OF THE DISTRICT COURT

APPENDIX C

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND SERBIA, FOR FACILITATING AND DEVELOPING COMMERCIAL RELATIONS.

* * *

The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty, and have named * * * their respective plenipotentiaries * * *

Who * * * have agreed upon and concluded the following articles:

* * *

Article II.

In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatsoever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state.

* * *

In faith whereof the plenipotentiaries of the two high contracting parties have signed the present treaty in duplicate in the English and Serbian languages, and thereto affixed their respective seals.

Done in duplicate at Belgrade this 2-14 day of October, 1881.

EUGENE SCHUYLER [SEAL]
CH. MIJATOVICH (SEAL]

APPENDIX D

91-502. TITLE TO ESCHEATED PROPERTY VESTS IN STATE—WHEN. Whenever the title to any property, either real or personal, or mixed, fails for any reason including want of heirs or next of kin, such title shall vest in the state of Montana immediately upon the death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

All sums escheated under the provisions of the Escheated Property Act shall be delivered by the state department of revenue

to the state treasurer and deposited by the treasurer in the agency fund; in connection with the recovery of money or property from escheats other than those from estates, the state department of revenue is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Moneys and properties placed in the agency fund shall be held in trust for a period of ten (10) years prior to deposit in the public school subfund in the trust and legacy fund by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title or interest in the property or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of

Montana or which information may lead to the discovery of such escheatable property.

[as amended Ch. 391, L. 1973]

* * *

91-509. COURT ACTION BY CLAIMANT OF PROPERTY IN HANDS OF STATE TREASURER—LIMITATION OF ACTION—JUDGMENT. Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark county, Montana, against the state treasurer. In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general and one must be served upon the director of revenue.

Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana. Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease. (underlining ours)

The judgment of the court in such action shall determine and fix the amount of inheritance tax, if any, which is due from said claimant to the state of Montana upon

the money or property claimed and none of said money or property shall be turned over to said claimant until said inheritance tax is paid. The state department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax.

[as amended by Ch. 391, L. 1973]

APPENDIX E

[Heading omitted. Same as on Appendix B, page 13a]

No. 37017 C O M P L A I N T

COMES NOW the plaintiffs and for their cause of action, complain and allege as follows:

I.

That plaintiffs are the nieces and heirs of Frank O'Blak, Deceased, who died intestate having left personal property, to-wit:

Cash in the sum of $8,693.91 in Yellowstone County, Montana;

Attached hereto as Exhibit "A" and

incorporated by reference is a family tree report issued by the Government of the Socialist Federal Republic of Yugoslavia and a translation thereof showing the relationship of plaintiffs to Frank O'Blak, deceased.

II.

In Probate Cause No. 16420, Craig Derry, the Administrator of the Estate of Frank O'Blak, deceased, caused said estate to be probated and delivered by way of escheat to the State of Montana, the sum of $8,693.91.

III.

That plaintiffs are residents of the country of Yugoslavia; that at the time of his death, Frank O'Blak was a resident of Yellowstone County, Montana, and plaintiffs were not a party to the probate proceedings in the State of Montana and did not have actual notice, thereof, or of the

rendering of said judgment of escheat.

IV.

That reciprocity to inherit exists between the State of Montana and the Socialist Federal Republic of Yugoslavia.

V.

That plaintiffs are lawfully entitled to all of the monies, to-wit: $8,693.91 in the hands of Hollis G. Connors, Treasurer of the State of Montana, with the exception of whatever monies may be due and owing to the State of Montana in the nature of inheritance tax.

VI.

That attached hereto and incorporated herein by reference as Exhibit "B" is an executed Power of Attorney appointing Sime Karaman, Counsel General of the Socialist Federal Republic of Yugoslavia, of San Francisco, California, as attorney for plaintiffs herein.

WHEREFORE, it is prayed that judgment be rendered for plaintiffs; that plaintiffs be entitled to all sums in the hands of Hollis G. Connors, Treasurer of the State of Montana; that inheritance tax, if any, due the State of Montana, be determined in this proceeding, and that the Treasurer of the State of Montana be required to deliver all funds in her hands received from the Estate of Frank O'Blak to be transmitted to plaintiffs, after deducting inheritance tax, if any.

DATED this 10th day of August, 1973.

DOWLING LAW FIRM
THOMAS F. DOWLING

PETER A. SCHWABE

By /s/ Thomas F. Dowling
ATTORNEYS FOR PLAINTIFFS
1230 Eleventh Avenue
Helena, Montana 59601

APPENDIX F

[Heading omitted. Same as on Appendix B, page 13a]

No. 37017 A N S W E R

NOW COMES the State of Montana by and through its duly elected, qualified, and acting Attorney General, and answers to Plaintiffs' Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against Defendants upon which relief can be granted.

SECOND DEFENSE

The Defendants deny the allegations of the Complaint upon the basis that said action is barred by the applicable statute of limitations.

THIRD DEFENSE

Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 3 and

6 of the Complaint and therefore deny the same; Defendants admit the allegations contained in paragraph 2 of the Complaint; Defendants deny each and every other allegation contained in the Complaint and particularly those allegations contained in paragraph 4 thereof on the grounds and for the reasons that reciprocity does not exist between the State of Montana and the Socialist Federal Republic of Yugoslavia for inheritance purposes nor is there a free transfer of funds between said State and Nation.

WHEREFORE, Defendants pray that Plaintiffs' Complaint be dismissed.

DATED this 9th day of October, 1973.

ROBERT L. WOODAHL, Attorney General of the State of Montana
/s/ Marshall Murray
By By Marcia Porter
MARSHALL MURRAY
Special Assistant Attorney General In Charge of Escheated States,
P. O. Box 899,
Kalispell, Montana 59901